

**ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE**

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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

In the Matter of:

) No. R-15-0017

)

) **COMMENT OF ARIZONA**

Petition to Amend Rule 7.5, Arizona

) **ATTORNEYS FOR CRIMINAL**

Rules of Criminal Procedure

) **JUSTICE REGARDING PETITION**

) **TO AMEND RULE 7.5, ARIZONA**

) **RULES OF CRIMINAL**

) **PROCEDURE**

)

)

Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment to the above-referenced petition.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of

criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ opposes the proposed amendment to Ariz. R. Crim. P. 7.5, because it is both unnecessary and contrary to the spirit of Arizona law that presumes a defendant should be released from custody pending trial.

Rule 7.2(a) provides that “[a]ny person charged with an offense bailable as a matter of right **shall** be released pending or during trial on the person’s own recognizance” unless the court determines that it will not assure the person’s appearance. If additional conditions, such as bail or Pre-Trial Services supervision, are required, then the court is required to “impose the least onerous conditions ... which will reasonably assure the person’s appearance.”

Rule 7.5 permits for the prosecutor or the victim to petition the court for the defendant’s release conditions to be revoked. If the prosecutor presents a verified petition, then the trial court may issue a warrant or summons. Rule 7.5(a). And if the victim petitions the court, then the court shall hold a hearing and make a determination after hearing both sides. If the court finds that the defendant has violated any of his release conditions, then the court may impose more onerous conditions, including imposing or increasing the secured appearance bond.

The rule change would enable Pre-Trial Services (PTS) to seek a warrant or summons similar to the procedure for prosecutors. Given that a defendant who is released to the third-party supervision of PTS is required to demonstrate compliance with all release conditions to that agency's satisfaction, it is commonplace that PTS is the first to know if a defendant under its supervision is noncompliant with release conditions.

But PTS does not need the authority to ask the court for a warrant or summons similar to the procedure for prosecutors. Instead, PTS may advise the court about a violation (or potential violation) of release conditions, and may request that the court set a hearing to review those conditions with the defendant. At such a hearing, the defendant has an opportunity to appear and explain the circumstances, and the court may make a considered decision as to release conditions. If the defendant fails to appear, then the court has the authority to issue a warrant for the defendant's arrest for failing to appear for a hearing.

When the court sets a hearing to review release conditions, a summons or warrant is unnecessary. The defendant already has counsel—either appointed by the court or retained with an appearance on file in court—as well as a PTS case manager with whom the defendant is supposed to maintain close contact; thus, as long as the court provides adequate notice so that the defendant can reasonably be expected to attend the hearing, a failure to appear will largely be based upon a failure to comply

with the expectation to maintain regular contact with counsel and PTS. Issuance of a summons would add unnecessary time and expense to the procedure for notifying the defendant. And issuance of a warrant prior to a hearing would not get the defendant into court any faster than if the court set a hearing and gave the defendant an opportunity to appear.

Nothing in the petition describes any problem with the current rule that the modification is designed to solve. AACJ wholeheartedly supports implementation of evidence-based practices, and it is important that PTS have a process for advising the court of such violations. But PTS already has such procedures available to it without this rule change.

If “the nature of the breach [of release conditions] may pose a substantial danger of any person or the community,” then it is expected that the defendant is being arrested for a crime or is being petitioned for an emergency mental health evaluation pursuant to Title 36. Allowing PTS to seek a warrant or summons in no way could resolve such a situation involving immediate danger.

## **CONCLUSION**

For these reasons, AACJ respectfully requests this Court reject the petition to amend Rule 7.5.

DATED: May 20, 2015.

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By /s/  
David J. Euchner

This comment e-filed this date with:

Supreme Court of Arizona

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